

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by	)	SPB Case No. 30940
	)	
<b>MERCEDES C. MANAYAO</b>	)	<b>BOARD DECISION</b>
	)	(Precedential)
From demotion from the position	)	
of School Facilities Program	)	<b>NO. 93-14</b>
Analyst I (Range C) to School	)	
Facilities Program Analyst I	)	June 1, 1993
(Range B), Department of General	)	
Services	)	

Appearances: Mark De Boer, Attorney, California State Employees' Association, on behalf of Appellant; Kathleen A. Yates, Senior Staff Counsel, Department of General Services, on behalf of Respondent.

Before Carpenter, President; Stoner, Vice-President; and Ward, Member.<sup>1</sup>

**DECISION**

This case is before the State Personnel Board (SPB or Board) for determination after the Board rejected the Proposed Decision of the Administrative Law Judge (ALJ) in the appeal of Mercedes C. Manayao (appellant) from demotion from the position of School Facilities Program Analyst I (Range C) to School Facilities Program Analyst I (Range B), with the Department of General Services (Department) at Sacramento. Appellant was demoted from her position because of allegations that she could not perform the work required of her position despite numerous training and counseling sessions.

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<sup>1</sup> President Richard Carpenter was present via speaker-phone.

(Manayao continued - Page 2)

The ALJ held that while appellant failed to competently or efficiently perform the duties of a School Facilities Program Analyst I (Range C), mitigating circumstances and policy considerations weighed in favor of modifying the demotion to a one-step salary reduction for four months.

The Board rejected the Proposed Decision of the ALJ and determined to decide the case itself, based upon the record, including the transcript of the hearing and the written and oral arguments submitted by the parties. Based upon the Board's review of the record, the Board reinstates appellant's demotion from School Facilities Program Analyst I (Range C) to School Facilities Program Analyst I (Range B).

#### **FACTUAL SUMMARY**

Appellant has served as a state employee since 1973 and has no prior adverse actions on her record. On October 4, 1988, appellant began working as a School Facilities Program Analyst I (Range C) for the Department. Within the Department, appellant was assigned to the Special Services Unit of the Office of Local Assistance. Her responsibilities included providing portable classrooms to school districts. In January 1990, appellant's duties as a School Facilities Program Analyst I (Range C) were increased as a result of a desk audit which revealed that appellant had previously not been performing the full duties of her classification.

(Manayao continued - Page 3)

On January 30, 1992, the Department notified appellant that it was taking adverse action against her by demoting her to the position of School Facilities Program Analyst I (Range B). The Notice of Adverse Action charged appellant with violations of Government Code section 19572, subdivisions (b) incompetency and (c) inefficiency, based upon appellant's alleged failure to adequately perform the duties of a School Facilities Program Analyst I (Range C). In addition, the Department charged that appellant failed to abide by the criteria established for working an alternative four-day work schedule.<sup>2</sup>

The ALJ found in her Proposed Decision that appellant indeed committed numerous errors during 1990 and 1991, and that appellant was both incompetent and inefficient in her work. Specifically, the ALJ found appellant responsible for the following incidents.

On January 17, 1991, appellant prepared a letter to the Superintendent of the Dixon Unified School District, advising him that the district must complete an application to support its need for a portable classroom or run the risk of not having its lease on the classroom renewed. The letter also directed the Superintendent to send the application to the Department of Education. This letter was erroneous and confusing; the school district was not

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<sup>2</sup> The ALJ dismissed this charge in her Proposed Decision, concluding that the Department's action in changing appellant back to a standard work schedule was sufficient "discipline" under the circumstances. The Board agrees with this conclusion.

(Manayao continued - Page 4)

required to file an application and any request for renewal should have been mailed to appellant's office, not to the Department of Education.

On April 3, 1991, the appellant prepared and submitted for review to her supervisor a letter to another school district. This letter contained a number of errors, among them, a miscalculation of the number of students required to be in attendance in order to necessitate three portable classrooms. That same day, appellant submitted another letter for review to the lead analyst which omitted important information and also contained a number of grammatical errors.

On May 3, 1992, the appellant was given an assignment to examine the Education Code and State Allocation Board Regulations and to update the Migrant Classroom Handbook. The due date for the assignment was May 14 (the due date was later extended to May 17 because appellant became ill and took 15 hours off work). The appellant submitted a draft on May 17, but that draft was unacceptable. It contained at least three pages of errors including numerous grammatical and language errors and lacked the necessary detail required. While the appellant submitted a second draft, it too was unacceptable and was rejected.

On June 25, 1991, appellant incorrectly advised a school district as to the space requirement necessary for the installation of portable classrooms. On July 15, 1991, the Department learned

(Manayao continued - Page 5)

that appellant incorrectly advised another school district that if it changed the proposed location of a migrant classroom building, it would have to start the application process for a building all over.

In addition to the above examples, the ALJ further found appellant's work to contain numerous instances of incompetency and inefficiency. The appellant routinely misfiled documents, incorrectly calculated eligibility worksheets, and included incorrect information in the files, making it very difficult when other staffmembers needed to access information. The record further revealed that appellant had a poor grasp of the English language. Her written work generally contained numerous grammatical and spelling errors, and often lacked clarity and specificity.

In addition to the above problems, appellant was repeatedly late in responding to inquiries from the public. While she was required to respond to letters within five days, she routinely failed to respond within that time. Also, when she did respond to the letters, she often sent out the wrong information. During this time, the lead analyst in appellant's section met with the appellant on numerous occasions to provide feedback, counseling, comments, and further training. For instance, on March 22, 1991, the lead analyst met with appellant and informed appellant as to the importance that her work be double-checked for accuracy. At

(Manayao continued - Page 6)

that time, the lead analyst issued appellant a lengthy memorandum, outlining her performance deficiencies and recommending that appellant receive additional training on written and verbal communication. Appellant did not obtain such training.<sup>3</sup> Appellant was repeatedly advised as to her shortcomings by her supervisor, both in memoranda and counseling sessions, but appellant's work performance did not improve. In addition to the informal warnings and counseling, appellant was denied a merit salary adjustment on October 1, 1991.

The ALJ who heard the case found appellant's inadequate work performance constituted incompetency and inefficiency. Moreover, the ALJ determined that appellant's poor performance was not the result of the Department's lack of adequate training. Rather, the ALJ found that appellant's poor performance was attributable, at least in part, to her lack of ability to communicate adequately orally or in writing, her unwillingness to attempt to improve her skills, and her failure to organize her work in a careful and precise manner. The Board concurs with these findings.

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<sup>3</sup> The record reveals that appellant made a request to take one course on "Accent Improvement For Non-Native Speakers" but the request was turned down on the grounds that the course fee of \$400 was too expensive. Instead, the department attempted to improve appellant's communication skills by helping her to enroll in communication courses at the local junior college, but appellant later dropped out.

(Manayao continued - Page 7)

However, despite these findings, the ALJ modified the penalty from a demotion to a one-step salary reduction for four months. The judge reasoned that while the harm to the public service was serious, a fact to be considered pursuant to Skelly v. State Personnel Board (1975) 15 Cal.3d 194, mitigating factors existed which argued against demoting appellant. First, the judge found that while the appellant had had several informal warnings and counseling sessions regarding her poor performance, she had never received a formal adverse action from the Department. Second, the judge took into account the fact that appellant was a long-term state employee (19 years) with a clean work record. Finally, the ALJ considered the fact that appellant had only recently been assigned the full duties of her classification and had the additional problem of having English only as a second language. For these reasons, the demotion was modified to a one-step salary reduction for four months.

#### **ISSUE**

What is the appropriate penalty under the circumstances?

#### **DISCUSSION**

When performing its constitutional responsibility to review disciplinary actions [Cal. Const. Art. VII, section 3(a)], the Board is charged with rendering a decision which, in its judgment is "just and proper". Government Code section 19582. One aspect of rendering a "just and proper" decision involves assuring that

(Manayao continued - Page 8)

the discipline imposed is "just and proper." In determining what is a "just and proper" penalty for a particular offense, under a given set of circumstances, the Board has broad discretion. (See Wyllie v. State Personnel Board (1949) 93 Cal.App.2d 838.) The Board's discretion, however, is not unlimited. In the seminal case of Skelly v. State Personnel Board (Skelly) (1975) 15 Cal.3d 194, the California Supreme Court noted:

While the administrative body has a broad discretion in respect to the imposition of a penalty or discipline, it does not have absolute and unlimited power. It is bound to exercise legal discretion which is, in the circumstances, judicial discretion. (Citations) 15 Cal.3d at 217-218.

In exercising its judicial discretion in such a way as to render a decision that is "just and proper," the Board considers a number of factors it deems relevant in assessing the propriety of the imposed discipline. Among the factors the Board considers are those specifically identified by the Court in Skelly as follows:

...[W]e note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in [h]arm to the public service. (Citations.) Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. (Id.)

While the ALJ considered proper factors in modifying the penalty to a salary reduction, the Board disagrees with the ultimate conclusions drawn.



(Manayao continued - Page 9)

As noted in the Proposed Decision, the harm to the public service in this case was serious. Appellant's position was one which involved important responsibilities, among them, working with school administrators and contractors in distributing portable classrooms to schools. In performing her job, appellant made repeated errors. Her poor performance resulted not only in aggravation to her supervisors, her co-workers, and the public with whom she dealt, but also in a loss of money to the state as the result of Department staff having to take time to correct her errors and provide her with repeated counseling and training.

As stated in the Proposed Decision, appellant's position was of a nature that the appellant was expected to bring to it a level of expertise and knowledge, including basic communication skills which appellant did not have. Moreover, the appellant did very little to improve her work performance, instead, denying that any problems existed or blaming others for her poor performance.

The Board agrees that appellant's poor work performance was a serious matter, and that the blame for her performance must lie with the appellant herself. The Board also finds that the Department provided adequate progressive discipline to appellant.

The Board's philosophy on the imposition of progressive discipline in cases of poor work performance is set forth in its Precedential Decision in the matter of Rita T. Nelson (1992)

(Manayao continued - Page 10)

SPB Dec. No. 92-07. In that decision, we stated:

"Historically, the SPB has followed the principles of progressive discipline in exercising its constitutional authority to review disciplinary actions under the State Civil Service Act. The principles of progressive discipline require that an employer, seeking to discipline an employee for poor work performance, follow a sequence of warnings or lesser disciplinary actions before imposing the ultimate penalty of dismissal. The obvious purpose of progressive discipline is to provide the employee with an opportunity to learn from prior mistakes and to take steps to improve his or her performance on the job." Rita T. Nelson at p. 6.

The Department argues that the ALJ misconstrued Nelson in the Proposed Decision by requiring the imposition of progressively severe formal discipline once the informal discipline imposed (i.e. counseling sessions, informal warnings, merit salary adjustment denial, etc.) appears to have failed. As stated in Nelson, the principles of progressive discipline require only that the employer "follow a sequence of warnings or lesser disciplinary actions", before imposing the penalty of dismissal. While the circumstances of some work performance cases may require the imposition of less severe formal discipline prior to a demotion, we agree with the Department that the circumstances in this case did not mandate such a process. The numerous informal warnings given appellant constituted an adequate first step in the application of progressive discipline. Progressive discipline does not necessarily require a Department to use every level of informal and formal discipline to correct a particular performance problem.

(Manayao continued - Page 11)

The purpose of progressive discipline is to provide the employee with an opportunity to learn from prior mistakes and to take steps to improve his or her performance on the job, prior to the imposition of harsh discipline. In this case, appellant was given numerous informal warnings as to her poor work performance and given ample opportunity to learn from her prior mistakes and to take steps to improve her performance on the job. The record shows that appellant did neither over the course of more than a year. Given the seriousness of appellant's poor work performance and the likelihood of problems recurring as demonstrated by repeated informal warnings to appellant, a demotion from School Facilities Program Analyst I (Range C) to (Range B) is an appropriate step in the chain of progressive discipline. The adverse action of demotion is sustained.

#### **ORDER**

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Government Code sections 19582 and 19584, it is hereby ORDERED that:

1. The adverse action of a demotion from School Facilities Program Analyst I (Range C) to School Facilities Program Analyst I (Range B) is sustained.

2. This decision is certified for publication as a Precedential Decision pursuant to Government Code section 19582.5.

(Manayao continued - Page 12)

STATE PERSONNEL BOARD\*

Richard Carpenter, President  
Alice Stoner, Vice-President  
Lorrie Ward, Member

\*Members Floss Bos and Alfred E. Villalobos were not on the Board when this case was originally considered.

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order at its meeting on June 1, 1993.

GLORIA HARMON  
Gloria Harmon, Executive Officer  
State Personnel Board